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**UNITED STATES DISTRICT COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SAN FRANCISCO DIVISION**

**IN RE GOOGLE PLAY STORE  
ANTITRUST LITIGATION**

THIS DOCUMENT RELATES TO:

*Epic Games Inc. v. Google LLC et al.*,  
Case No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD

**GOOGLE'S ADMINISTRATIVE  
MOTION TO FILE UNDER SEAL  
MATERIALS IN CONNECTION WITH  
GOOGLE'S OBJECTIONS TO EPIC'S  
PROPOSED INJUNCTION**

Judge: Hon. James Donato

## **INTRODUCTION**

Pursuant to Civil Local Rules 7-11 and 79-5, and Paragraphs 25-30 of this Court’s Standing Order for Civil Cases, Google Defendants (“Google”) respectfully move the Court to seal portions of supporting documents to Google’s Objections to Epic’s Proposed Injunction (MDL Dkt No. 958). This Administrative Motion to File Under Seal is supported by the Declaration of Rakesh Patel (“Patel Decl.”) and the Proposed Order submitted herewith and is submitted pursuant to Civil Local Rule 79-5(c).

## **LEGAL STANDARD**

The Ninth Circuit holds that sealing is appropriate where the “party seeking to seal a judicial record” demonstrates “compelling reasons” that outweigh the “general history of access and the public policies favoring disclosure.” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006); *see also Fed. Trade Comm’n v. Qualcomm Inc.*, No. 17-CV-00220-LHK, 2019 WL 95922, at \*3 (N.D. Cal. Jan. 3, 2019). Compelling reasons may exist where the material to be disclosed includes “business information that might harm a litigant’s competitive standing.” *Ctr. For Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598-99 (1978)). Compelling reasons may also exist where the information to be disclosed includes confidential contracts. *Qualcomm*, 2019 WL 95922, at \*3 (N.D. Cal. Jan. 3, 2019). Moreover, public release of “detailed financial information” can implicate a “significant interest” of a party because it could lead to competitive harm, such as ceding “an advantage in contract negotiations.” *See Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (there are “compelling reasons” to seal if disclosure would create an “advantage in contract negotiations”). As the Ninth Circuit has stated, “[s]ecrecy is a one-way street: Once information is published, it cannot be made secret again.” *In re Copley Press, Inc.*, 518 F.3d 1022, 1025 (9th Cir. 2008).

## **ARGUMENT**

Recognizing that there is a presumption in favor of access to court papers, Google focuses this narrow sealing request on two instances of non-public information related to an

ongoing contractual agreement with a non-party carrier and related financial terms, which are referenced in the expert report of Dr. Gregory K. Leonard. Specifically, the information Google seeks to protect reflects contractual terms and negotiated rates for direct carrier billing (“DCB”), a form of payment Google makes available on Google Play for transactions processed through Google Play’s billing system, with non-party carrier T-Mobile. Public disclosure of this information will cause severe and irreparable harm to not only Google’s business relationship with T-Mobile and its competitive position in negotiating with other carriers, but also that of its business partner – T-Mobile – who is not a party to this lawsuit.

The “compelling reasons” standard is met here because the material at issue reveals highly confidential contractual terms between Google and a non-party, the public disclosure of which could be used by Google’s competitors and harm its competitive standing. Ninth Circuit courts have held that this category of confidential, non-public information may be sealed, pursuant to the “compelling reasons” standard. *See, e.g., Baird v. BlackRock Institutional Tr. Co.*, 403 F. Supp. 3d 765, 792 (N.D. Cal. 2019) (“Courts have found that ‘confidential business information’ in the form of... ‘financial terms’...satisfies the ‘compelling reasons’ standard.”) (citation omitted); *In re Qualcomm Litig.*, No. 3:17-cv-0108-GPC-MDD, 2017 WL 5176922, at \*2 (S.D. Cal. Nov. 8, 2017) (same); *Qualcomm*, 2019 WL 95922, at \*3 (N.D. Cal. Jan. 3, 2019) (sealing confidential contracts).

First, counterparties could use this information to obtain the upper hand in negotiations with Google. *See Philips v. Ford Motor Co.*, 2016 WL 7374214, at \*4 (N.D. Cal. Dec. 20, 2016) (“the need to avoid competitive disadvantage in contract negotiations . . . is a compelling reason that justifies sealing”); *Apple*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (granting motion to seal where information could “give suppliers an advantage in contract negotiations, which they could use to extract price increases for components”). For example, a carrier seeking to do business with Google for DCB transactions on Google Play, or a carrier who is renegotiating an existing DCB agreement with Google, could leverage these terms and rates to obtain a better deal by knowing Google’s willingness-to-pay – confidential information it would otherwise not have

1 access to. As a result, Google could end up paying higher rates than it would have but for the  
2 disclosure, negatively impacting its margins and business.

3 Second, Google’s competitors could improperly utilize this information in an effort to  
4 compete unfairly against Google. *See Apple*, 727 F.3d at 1225 (Fed. Cir. 2013) (there are  
5 “compelling reasons” to seal whether disclosure would lead to a “competitive disadvantage”  
6 compared to the party’s “current position”); *Sun Microsystems Inc. v. Network Appliance*, No.  
7 C–08–01641–EDL, 2009 WL 5125817, at \*9 (N.D. Cal Dec. 21, 2009) (sealing confidential  
8 business information, which if disclosed could cause harm to the parties). For example,  
9 Google’s rivals could attempt to negotiate rates with carriers to match or beat the payment  
10 processing rates paid by Google. Google competes with other mobile operating systems, app  
11 stores, and billing providers on multiple dimensions, including through DCB agreements that  
12 provide additional forms of payments to users. Disclosure of this information could potentially  
13 impact commercial negotiations between payment providers and developers seeking to  
14 implement their own payment processing system for their apps distributed on Google Play in an  
15 effort to better compete against Google. In particular, insight into Google’s confidential DCB  
16 terms for transactions processed through Google Play’s billing system would give both  
17 developers and competing payment providers an unfair advantage, as they could unfairly use this  
18 information to structure their own agreements and set prices.

19 For the reasons explained above, Google respectfully requests that the Court grant  
20 this Motion and enter the Proposed Order submitted herewith.

21  
22 Dated: May 2, 2024

Respectfully submitted,

23 By: /s/ Dane P. Shikman  
24 Dane P. Shikman

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**E-FILING ATTESTATION**

I, Glenn D. Pomerantz, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Glenn D. Pomerantz  
Glenn D. Pomerantz